

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

KEVIN M. MOORE,)	Case No.: 1:10 CV 1905
)	
Plaintiff)	
)	
v.)	JUDGE SOLOMON OLIVER, JR.
)	
COMMISSIONER OF SOCIAL)	
SECURITY,)	
)	
Defendant)	<u>ORDER</u>

The Commissioner of Social Security (the “Commissioner”) denied supplemental social security income benefits to the claimant, Kevin M. Moore (“Moore”) in the above-captioned case. Moore sought judicial review of the Commissioner’s decision, and this court referred the case to Magistrate Judge James R. Knepp for preparation of a report and recommendation. On October 22, 2010, Magistrate Judge Kneff issued an Order setting the schedule for filing documents in the case. He gave the Commissioner a maximum of three months from the filing of the Complaint to file an answer and transcript. Magistrate Judge Knepp then gave Moore thirty days from the filing of the answer and the transcript to file his brief on the merits. He expressly stated in this Order that “[i]n the event the Plaintiff’s brief on the merits is not filed within thirty (30) days after the answer, the case may be subject to dismissal for want of prosecution without further notice.” (Order, ECF No. 9, at p. 2.) The Commissioner filed his Answer and the Transcript of Proceedings on December 29, 2010. As of February 8, 2011, Moore still had not filed his brief on the merits, so the Magistrate

Judge issued an Order to Show Cause (ECF No. 13). The Magistrate Judge required Moore to show cause on or before February 28, 2011, why the case should not be dismissed for lack of prosecution.

On February 25, 2011, Moore's counsel filed a Motion for Extension of Time *Instante* (ECF No. 14), asking for a thirty-day extension to file a brief on the merits because he had yet to receive much of the record of the administrative proceedings. The court granted the Motion and gave Moore until March 25, 2011, to file a brief on the merits. Also on February 25, 2011, Moore, through counsel, filed his Response to Order to Show Cause (ECF No. 15). The entirety of the Response by Moore's counsel is as follows:

Now comes the Plaintiff Kevin Moore who moves that the herein case not be dismissed for lack of prosecution as it would materially and adversely affect Plaintiff's rights set forth in his Complaint and in the record of his case.

Counsel for Plaintiff has not received the hard copy record of this case from which to draft his Appeal. Counsel does not have his own record of the underlying proceedings because Counsel for Plaintiff herein was not the Plaintiff's representative in the administrative proceedings before the Commissioner of Social Security which have previously been had. In view of the foregoing, Plaintiff pleads and will exert all efforts to obtain the record so that he may prosecute the case.

(Pl.'s Response to Order to Show Cause, ECF No. 15.)

Moore's counsel did not file his brief by March 25, 2011, nor did he seek any further extension. As a consequence, the Magistrate Judge submitted his Report and Recommendation on March 31, 2011, recommending that the case be dismissed for lack of prosecution (ECF No. 16). He reviewed the procedural history of the case and explained that Moore's counsel had not filed his brief on the merits.

Moore was then given until April 14, 2011, to file any objections. As of the date of this Order, April 26, 2011, Moore has not filed objections to the Report and Recommendation. By

failing to do so, he has waived the right to appeal the Magistrate Judge's recommendation. *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140 (1985).

The court finds, after careful *de novo* review of the Magistrate Judge's Report and Recommendation and all other relevant documents in the record, that the Magistrate Judge's conclusions are fully supported by the record and controlling case law. Moore's counsel has yet to file a brief on the merits in this case, and even after the Magistrate Judge recommendation to this court that the case be dismissed, Moore did not file objections to this recommendation. Accordingly, the court adopts as its own the Magistrate Judge's Report and Recommendation. (ECF No. 16.) This case is hereby dismissed with prejudice for failure to prosecute.

IT IS SO ORDERED.

/s/ SOLOMON OLIVER, JR. _____
CHIEF JUDGE
UNITED STATES DISTRICT COURT

April 26, 2011